

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

FEDERAL TRADE COMMISSION,
STATE OF CALIFORNIA, STATE OF
COLORADO, STATE OF ILLINOIS,
STATE OF INDIANA, STATE OF IOWA,
STATE OF MINNESOTA, STATE OF
NEBRASKA, STATE OF OREGON,
STATE OF TENNESSEE, STATE OF
TEXAS, STATE OF WASHINGTON, and
STATE OF WISCONSIN,

Plaintiffs,

v.

SYNGENTA CROP PROTECTION AG,
SYNGENTA CORPORATION,
SYNGENTA CROP PROTECTION, LLC,
and CORTEVA, INC.,

Defendants.

Case No. 1:22-cv-00828-TDS-JEP

**PLAINTIFFS' MOTION TO SET
INITIAL PRETRIAL
CONFERENCE**

Plaintiffs Federal Trade Commission and the states of California, Colorado, Illinois, Indiana, Iowa, Minnesota, Nebraska, Oregon, Tennessee, Texas, Washington, and Wisconsin respectfully move the Court to set a Rule 16 initial pretrial conference for the earliest available date so that the parties and the Court can begin moving this case forward without delay.

I. Background

Plaintiffs filed the initial Complaint in this action on September 29, 2022. (Doc. 1). Defendants Corteva, Inc. ("Corteva") and Syngenta Crop Protection AG,

Syngenta Corporation, and Syngenta Crop Protection, LLC (collectively, “Syngenta”) each moved to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6) on December 12, 2022. (Doc. 64, 65). Plaintiffs filed an Amended Complaint on December 23, 2022, adding Tennessee and Washington as state plaintiffs and amending other allegations. (Doc. 79) (“Am. Compl.”).

Since this case was first filed in September, Plaintiffs have repeatedly sought, without success, to initiate discovery and case management discussions with Defendants. Rule 26(f)(1) requires the parties to confer regarding discovery and other case management issues “as soon as practicable” and “in any event at least 21 days before . . . a scheduling order is due under Rule 16(b).” Fed. R. Civ. P. 26(f)(1). The Local Rules further provide that the parties must meet and confer at least fourteen days before the initial pretrial conference, which shall be scheduled thirty days in advance and “within the time set by . . . Rule 16(b).” L.R. 16.1(b). In this case, counsel for Syngenta first appeared on October 10, (Doc. 16), and a scheduling order was therefore due under Rule 16(b) by December 9. *See* Fed. R. Civ. P. 16(b)(2).

Defendants, however, have declined to confer with Plaintiffs pursuant to Rule 26(f) on the grounds that a conference is premature until the Court sets an initial pretrial conference. Defendants further stated their position that an initial pretrial conference is premature at this time. *See* Carson Decl. ¶¶ 4, 5; Ex. A at 4.

II. Public Policy Favors Expeditious Resolution of Plaintiffs' Claims and an Initial Pretrial Conference at the Earliest Available Date

To effectuate the strong public-policy interests favoring the swift resolution of government antitrust cases, Plaintiffs respectfully move the Court to set a Rule 16 initial pretrial conference for the earliest available date.

In this suit, Plaintiffs seek to enforce federal and state antitrust laws and to end Defendants' ongoing and unlawful restraint of competition in pesticide markets, which results in higher prices for farmers. Courts have repeatedly recognized that strong public-policy interests favor resolving such government antitrust cases promptly and in advance of private litigation. *See United States v. Dentsply Int'l, Inc.*, 190 F.R.D. 140, 145 (D. Del. 1999) (“[C]lear public policy” favors the “prompt resolution of Government antitrust claims to provide expeditious relief to the public[.]”); *FTC v. Viera Pharms., LLC*, No. 20-cv-00706 (DLC), 2021 WL 76336, at *1 (S.D.N.Y. Jan. 8, 2021) (“The parties and the public have a significant interest in resolving the issues raised by the [government] plaintiffs' claims with due expedition.”).

Defendants' refusal to meet and confer regarding case management and discovery issues until an initial pretrial conference is scheduled has effectively imposed a unilateral and unwarranted stay of discovery—without meeting the standards for a stay. A party seeking to stay discovery “must come forward with a specific factual showing that the interests of justice and considerations of prejudice and undue burden to the parties require a protective order and that the benefits of a stay outweigh the costs of delay.” *Kron Med.*

Corp. v. Growth, 119 F.R.D. 636, 638 (M.D.N.C. 1988) (denying motion to stay discovery pending resolution of motion to transfer); *see also* Carson Decl. Ex. B (Hrg. Tr. at 12:19-13:18, *FTC v. Surescripts, LLC*, No. 1:19-cv-01080-JDB (D.D.C. Feb. 27, 2020)) (denying defendant's request for partial stay of discovery pending motions to dismiss in private cases); Carson Decl. Ex. C (Order (Doc. 72) at 1, *FTC v. Qualcomm Inc.*, No. 5:17-cv-00220-LHK (N.D. Cal. Apr. 13, 2017)) (denying defendant's request to defer discovery pending ruling on Rule 12(b)(6) motion). Defendants have not made and cannot make any such showing.

III. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court set a Rule 16 scheduling conference for the earliest available date on the Court's calendar.

Dated: December 23, 2022

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing brief complies with Local Rule 7.3(d) in that it contains fewer than 6,250 words as reported by word processing software.

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